

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9345 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PARK LAND EVENUE CO.OP

HOUSING SOCIETY LTD.

Versus

STATE OF GUJARAT

Appearance:

MR MA PAREKH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3

MR HS MUNSHAW for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/07/98

ORAL JUDGMENT:

Rule.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner-Park Land Avenue Cooperative Housing Society Ltd - prays that respondents nos. 2,3 and 4, Collector, Mehsana, District Panchayat Mehsana and the District Development Officer, Mehsana, be directed to implement the order dated 25-6-1992 passed by Division Bench of this Court in Letters Patent Appeal Nos. 343/87

to 458/87 (Annexure A) that respondent no.2 - Collector, Mehsana be restrained from collecting fresh amount of premium for new tenure land and to direct them to convert the land into old tenure land on the ground that the petitioner has already paid the amount of premium of new tenure land in the year 1982.

3. As far as the first prayer is concerned, in his affidavit-in- reply the District Development Officer Mehsana, has stated that the petitioner's application for N.A. permission was considered by the Executive Committee of the Mehsana District Panchayat and the same was rejected and a resolution was passed refusing to grant N.A.permission to the petitioner. It is stated that the decision was communicated to the original land holder on 4-12-1992. Copy of the said communication alongwith the Postal Certificate is produced alongwith the affidavit-in-reply. It is,therefore, clear that the application for N.A. permission is not pending and was decided long back and therefore, there cannot be any question of giving direction to consider the pending application.

It is however, clarified that it will be open to the present petitioner-society which, as stated by the petitioner's learned counsel, is in occupation of the land for the last more than 15 years, to apply to the District Panchayat for N.A.permission and the same shall be considered by the District Panchayat on merits and in accordance with law.

4. At this stage one grievance seriously made on behalf of the petitioner is required to be noted. The previous communication dated 10-11-1997 from the District Development Officer, Mehsana (Annexure B to the reply affidavit), indicates that the application for N.A.permission was rejected only on the ground that the opinion of the concerned departments/offices was not produced by the land holder. Mr.Parekh has submitted that since all the above offices are either Government offices or Departments or offices of or under the District Panchayat , it would be easier for the District Panchayat to obtain their opinions rather than requiring the petitioner to obtain their opinions which would be nothing but requiring the petitioner to run from pillars to posts.

5. On the other hand Mr. Munsha, learned Counsel for the District Panchayat, opposes the above request on two grounds; in the first place it is for the applicant for N.A.Permission to produce all the certificates or

opinions in support of his application and secondly, if the District Panchayat does not promptly receive the opinions from the concerned departments, on expiry of the period of 90 days, the applicant will claim deemed permission under the proviso to Section 65 of the Bombay Land Revenue Code.

6. Prima facie it appears that looking to the large number of agencies running into eleven, which are either offices under the control of the State Government or the District Panchayat, there should not be any difficulty on the part of the District Panchayat in getting remarks/opinions on the queries of the District Panchayat as to whether such agencies have any objection in the grant of the N.A. permission to the petitioner. However, a perusal of the letter dated 10-11-1997 from the District Development Officer, Mehsana to the petitioner society indicates that the opinions of different departments/offices was required for different purposes:

I. Regarding title to the land and restrictions, if any, on the owner's rights and regarding the need of local authority. Opinions are sought from -

- (i). Mamlatdar, Kalol
- (ii). Prant Officer (Tenancy)
- (iii). Taluka Development Officer
- (iv). Gram Panchayat.

II. Regarding the impact of non-agricultural activity on the land in question:

- (v). Executive Engineer R&B Division No.2
(Ribbon Development Branch).
- (vi). District Health Officer (District Panchayat)

III. Regarding need of the land by other public agencies or regarding the impact of any construction on the land in question on the activities of other public agencies:

- (vii). Special Land Acquisition Officer;
- (viii). Special Land Acquisition Officer, ONGC;
- (ix). G.I.D.C.
- (x). Executive Engineer, Narmada Project, Gandhinagar
- (xi). Deputy Executive Engineer, Tubewell Branch
(District Panchayat.);

Looking to the object with which the opinions are

sought from the different public offices, it appears that while the District Panchayat may be justified in requiring the applicant to produce the opinions of the first four authorities regarding the applicant's title to the land which process may also avoid any further queries from the concerned authorities, once the applicant has submitted the application for N.A.Permission with the layout plan, in as many copies as required by the District Panchayat for different agencies (and the certificates of the above four authorities), all other authorities from Sr.Nos. (v) to (xi) mentioned above could certainly be requested by the District Panchayat to give their opinion on the N.A.Permission application and the proposed lay out plan. When the Government has accepted the need to provide single window services to nonresident Indians, there is no justification to deny Resident Indians such facilities. A responsive administration is expected to minimize citizen's difficulties and not to multiply them. Citizens would also be prepared to pay more charges which would go to the public coffers.

7. Moreover the Statute has already prescribed the time limit of 90 days for deciding the applications for N.A.Permission and therefore, it goes without saying that the District Panchayat while soliciting the opinions of the other agencies within 15 days from the date of receipt of the application can also inform them about the statutory time limit and request them to send their opinions within 45 days so as to enable the District Panchayat to decide the applications within the time limit. If the other agencies are not able to give their opinion on account of the applicant not having provided complete information, the applicant can be informed about the same with a rider that the application is not yet granted which would avoid the fiction of deeming permission. There is also no reason why the Government or the Panchayat cannot provide for coordination of all such agencies by holding their meeting, say, once a month and on that day the applicants for such N.A.permissions or other permissions can also be called for supplying any further information, if required.

Mr.Parekh, learned Counsel for the petitioner states that the petitioner will also cooperate with the District Panchayat in the matter of obtaining the N.A.Permsission.

8. As far as the second grievance is concerned, according to the petitioner, the Collector had already fixed the premium for conversion of the land from new

tenure land to old tenure land and the said amount of premium was already paid by the petitioner in 1982. It is open to the petitioner to point out all the relevant facts to the respondent authorities and also to the concerned Government/Panchayat office dealing with the said issue. At this stage the Court does not express any opinion on the said issue as it is for the authorities in the first instance to decide the said issue in accordance with law and the question of judicial review cannot arise until the authority takes some decision on the issue.

9. It is accordingly directed that as and when the applicant makes a fresh application to the Mehsana District Panchayat for N.A.permission, the Mehsana District Panchayat shall decide the same in accordance with law and in light of the observations made in this judgment.

10. This petition accordingly stands disposed of in terms of the aforesaid directions and observations. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S.Shah J.)

sharma